

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 491 (Delegates West and Hettleman)
Health and Government Operations

Judicial Proceedings

Estates and Trusts - Maryland Trust Act - Governing Law of Trust Provisions

This bill specifies that the meaning and effect of the terms of a trust are determined by the law of the jurisdiction as designated by the settlor, unless the designation of the law of that jurisdiction is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue. If the terms of the trust do not contain a controlling designation, the meaning and effect of the terms of a trust are determined by the law of the jurisdiction that has the most significant relationship to the matter at issue.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect local governmental finances.

Small Business Effect: None.

Analysis

Current Law: A settlor is not specifically authorized in statute to designate the governing law of a trust, but is specifically authorized to designate the principal place of administration of a trust. The terms of a trust designating the principal place of administration are valid and controlling if (1) the principal place of business of a trustee is located in or a trustee is a resident of the designated jurisdiction or (2) all or part of the administration of the trust occurs in the designated jurisdiction. This does not preclude other means for establishing a sufficient connection with the designated jurisdiction.

The principal place of administration typically determines which court has jurisdiction over a trust and may be a factor in determining what jurisdiction's governing law will be used to determine the meaning and effect of the trust.

Trust Administration: Generally, a trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiary. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty to administer a trust in the appropriate place, may transfer the principal place of administration of the trust to another state or a jurisdiction outside the United States. The authority of a trustee to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

Under the Maryland Trust Act (MTA), a trust not created by will is valid if creation of the trust complies with (1) the law of the jurisdiction in which the trust instrument was executed or (2) the law of the jurisdiction in which, at the time of creation:

- the settlor was domiciled or was a national;
- a trustee of the trust was domiciled or had a place of business; or
- any trust property was located.

Terms of a Trust: Generally, the terms of a trust prevail over a provision of MTA, with specific exceptions relating to, among other things, (1) the requirements for creating a trust; (2) the duty of a trustee to act with reasonable care, as specified; (3) the requirement that a trust have a lawful purpose that is not contrary to public policy and that is possible to achieve, with terms that are for the benefit of its beneficiaries; (4) court actions that modify or terminate a trust or bond, or that alter the commission of a trustee, or other actions in the interest of justice; (5) the rights of specified creditors and assignees; (6) court venue and subject matter jurisdiction; (7) specified administrative procedures, notice, and reporting requirements; (8) specified exculpatory terms; (9) specified rights of a person other than a trustee or beneficiary; and (10) the prohibition against a person serving as a representative of a beneficiary of a trust when that person is serving as a trustee of the same trust.

A court, however, may reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proved by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Judicial Administration of Trusts, Generally: On a motion by an interested person, on its own motion, or as otherwise provided by law, a court may intervene actively in the administration of a trust and impose remedies as the public interest and the interests of the beneficiaries may require. A judicial proceeding involving a trust may relate to a matter

involving the administration of the trust, including a request for instructions and an action to declare rights.

Background: According to the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission), the bill's provisions are part of the Uniform Trust Code (UTC), revised in 2010. MTA, which adopted a substantial portion of the UTC in 2014, did not include the provisions contained in the bill.

MTA applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise provided by statute), judgment, or decree that requires a trust to be administered in the manner of an express trust.

Additional Information

Prior Introductions: None.

Cross File: SB 267 (Senator Lee) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; National Conference of Commissioners on Uniform State Laws; Department of Legislative Services

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